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May 12, 2000

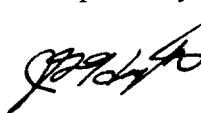
VIA HAND DELIVERYMagalie Roman Salas, Esq.
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554RECEIVED
MAY 12 2000
SECOND VICE PRESIDENT AND SECRETARY
OFFICE OF THE SECRETARYRe: CC Docket No. 98-184 – Transfer of Control of GTE Corporation
Notice of Written Ex Parte Communication

Dear Ms. Salas:

I am writing to inform you that on Friday, May 12, 2000, Alexander V. Netchvolodoff, on behalf of Cox Communications, Inc., sent the attached letter to Chairman Kennard, with copies to Commissioners Ness, Furchtgott-Roth, Powell and Tristani, Kathryn Brown, to the Chief of Staff, to the commissioners' common carrier legal advisors, and to Larry Strickling and Robert Atkinson of the Common Carrier Bureau.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and one copy of this letter are being submitted to the Secretary's office for the above-captioned docket by the close of business on the day following the submission of that written ex parte presentation and copies of this letter are being provided to the recipients of the presentation. Should there be any questions regarding this filing, please contact the undersigned.

Respectfully submitted,

J.G. Harrington
Counsel for Cox Communications, Inc.

JGH/vll

Attachment

| | | | |
|-----|-----------------------------|------------------------|--------------------------|
| cc: | Hon. William E. Kennard | Kathryn C. Brown, Esq. | Sarah Whitesell, Esq. |
| | Hon. Susan Ness | Dorothy Attwood, Esq. | Larry Strickling, Esq. |
| | Hon. Harold Furchtgott-Roth | Jordan Goldstein, Esq. | Robert C. Atkinson, Esq. |
| | Hon. Michael K. Powell | Rebecca Beynon, Esq. | |
| | Hon. Gloria Tristani | Kyle Dixon, Esq. | |

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Alexander V. Netchvolodoff
Vice President of Public Policy

May 12, 2000

Hon. William E. Kennard
Chairman
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Application of GTE Corporation and Bell Atlantic Corporation for
Consent to Transfer of Control of Certain Licenses and Authorizations
CC Docket No. 98-184
Written Ex Parte Presentation

Dear Chairman Kennard:

I am writing to follow up on earlier ex parte submissions by Cox Communications, Inc. ("Cox") concerning the merger of Bell Atlantic and GTE. As the earlier submissions explain, Cox takes no position on whether the proposed merger should be approved, but submits that, if the merger is approved, it should be conditioned on payment by GTE of reciprocal compensation owed to competitive local exchange carriers ("CLECs") for local calls to Internet service providers ("ISPs").¹

Cox proposed this condition only after the Virginia State Corporation Commission (the "SCC") determined that it would not act on requests for enforcement of the reciprocal compensation obligation for ISP-bound traffic because of concerns about its jurisdiction to do so. The SCC declined jurisdiction even though it previously had held that ISP-bound traffic was covered by the reciprocal compensation requirement and even though the U.S. District Court had held that carriers must seek to enforce their rights with the SCC before taking any other action. Unsurprisingly, now that the SCC has declined to act, GTE continues to refuse to make any payments for traffic that it believes was terminated to ISPs.²

¹ The text of Cox's proposed condition was contained in the letter of J.G. Harrington to the common carrier legal advisors on March 10, 2000. A copy of that letter is attached.

² GTE recently agreed to pay Cox for the traffic that GTE believes was terminated to non-ISP customers. This amounts to approximately 33 percent of the total traffic terminated by Cox. GTE has not explained how it determined the amount it was willing to pay and has not complied with provisions of its interconnection agreement with Cox that require payment of amounts in dispute. GTE also applied an incorrect rate in its calculations, basing its payments on the rate for end office interconnection rather than the rate for tandem interconnection. As a consequence, GTE still owes Cox in excess of \$1.9 million in reciprocal compensation payments.

GTE's actions are particularly significant because they relate to the central question before the Commission in evaluating these applications: whether the merger will have an adverse effect on the development of competition in local telephone service. GTE's refusal to pay reciprocal compensation to Cox, which plainly is a legitimate, growing CLEC, with thousands of customers in GTE's Virginia service area, is not a matter of principle, but rather is a calculated effort to deprive Cox of revenues for services Cox has performed for the benefit of GTE's customers.³ The loss of those revenues reduces Cox's profits from providing local exchange services in GTE territory and, consequently, makes GTE markets less attractive to Cox and, for that matter, to other CLECs. The loss of these revenues also makes it more difficult for Cox to compete with GTE's prices for local exchange service. The net result is that consumers in GTE territory are harmed because of GTE's anticompetitive behavior.

As the Commission has stated repeatedly, these types of competitive concerns are central to the public interest analysis of mergers.⁴ The Commission will not conclude that a merger is in the public interest unless it determines that any competitive harms caused by the merger are overcome by specific public interest benefits.⁵ Here, the condition proposed by Cox will eliminate a significant competitive harm caused by GTE's behavior, which is an important element in the Commission's analysis. Indeed, given the centrality of competitive issues to the merger analysis, a reviewing court could conclude that a failure to consider the effect of GTE's failure to pay reciprocal compensation on the merger was reversible error.⁶

The Commission can, however, avoid these concerns by requiring GTE to make the reciprocal compensation payments it owes to CLECs within its territory, in accordance with the terms of its freely-negotiated interconnection agreements. As Cox previously has described, such a condition is reasonable because it is fully in compliance with the Commission's policies and rules; is easy to implement because it breaks no new policy grounds; and is even-handed in its effects because it applies to all CLECs on an equal basis. More important, it will help restore competitive balance in GTE's territory by preventing unilateral reinterpretation of interconnection agreements and by showing

³ It is particularly significant in this context that GTE never has claimed that Cox is engaged in fraudulent behavior or that the calls for which it owes reciprocal compensation were not made by its customers. GTE simply refuses to pay.

⁴ See, e.g., Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer of Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14742-3 (1999) (proposed merger could harm competition in local exchange markets, including reducing CLEC's ability to fund their operations).

⁵ See, e.g., Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of MCI Communications Corp. to WorldCom, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 18025, 18031-2 (1998) (Commission weighs harms and benefits and may condition grant to ensure public interest is served).

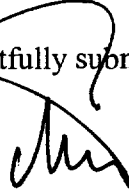
⁶ See *AT&T v. Iowa Utilities Board*, 525 U.S. 366, ___, 119 S. Ct. 721, 735 (1999) (Commission failure to address all relevant elements of area of inquiry is reversible error).

Hon. William E. Kennard
May 12, 2000
Page 3

that anticompetitive behavior will not be rewarded. For these reasons, to the extent the Commission grants these applications, I urge you to condition the grant as requested by Cox in its earlier submissions.

In accordance with Section 1.1206 of the Commission's Rules, an original and one copy of this letter will be submitted to the Secretary's office by the end of the business day following delivery of this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Netchvolodoff', written over the closing text.

Alexander V. Netchvolodoff

Attachment

cc: Hon. Susan Ness
Hon. Harold Furchtgott-Roth
Hon. Michael K. Powell
Hon. Gloria Tristani
Kathryn C. Brown, Esq.
Dorothy Attwood, Esq.
Jordan Goldstein, Esq.
Rebecca Beynon, Esq.
Kyle Dixon, Esq.
Sarah Whitesell, Esq.
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March 10, 2000

VIA HAND DELIVERY

Dorothy Attwood, Esq.
Office of Chairman Kennard
Federal Communications Commission
445 12th Street, S.W., Room 5-A848
Washington, D.C. 20554

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Office of Commissioner Ness
Federal Communications Commission
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Rebecca Beynon, Esq.
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Kyle Dixon, Esq.
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Sarah Whitesell, Esq.
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Federal Communications Commission
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Washington, D.C. 20554

Re: CC Docket No. 98-184 – Transfer of Control of GTE Corporation
Written Ex Parte Communication

Ladies and Gentlemen:

I am writing on behalf of our client Cox Communications, Inc., as a follow-up to the meetings held yesterday between several of you and representatives of Cox concerning Bell Atlantic's and GTE's failure to pay reciprocal compensation due to Cox for termination of Internet-bound traffic in Virginia. During those meetings, Cox took no position on the merits of the merger. However, the Cox representatives requested that, if the Commission grants the pending applications to transfer control of GTE, the grant be conditioned on payment by Bell Atlantic and GTE of the compensation due to Cox and other CLECs under duly ratified interconnection agreements. I understand that one question that arose during these meetings was how such a condition would be worded. Cox has asked me to provide you with language for a condition that could be included in any order granting the transfer applications.

As discussed during the meetings, Cox views this simply as a matter of enforcing the valid terms of existing interconnection agreements between Cox and Bell Atlantic and GTE and does not seek to have the Commission adopt any new policies concerning reciprocal

compensation for Internet-bound traffic. The Commission already has held that interconnection agreements adopted prior to the Commission's *Reciprocal Compensation Order* are enforceable to the extent that they call for reciprocal compensation for Internet-bound traffic. In Cox's case, however, the Virginia State Corporation Commission has declined to enforce the agreement on grounds unrelated to the substance of the reciprocal compensation provisions, even though the Virginia Commission previously had held that compensation for Internet-bound traffic was due under existing agreements.¹ Thus, Commission action is necessary to enforce Cox's rights under its agreements with Bell Atlantic and GTE.

Cox's proposed condition is as follows:

The applications are granted subject to the condition that, prior to consummation of the transfer of control, Bell Atlantic and GTE must pay all amounts due to other carriers as compensation for termination of Internet-bound traffic under any interconnection agreement entered into by Bell Atlantic or GTE prior to the Commission's February 26, 1999, *Declaratory Ruling and Notice of Proposed Rulemaking* in CC Docket Nos. 96-98 and 99-68.

This condition is narrowly tailored to address Cox's concerns without adopting new policies. Specifically, it covers only those interconnection agreements entered into before the Commission's *Reciprocal Compensation Order*, and therefore does not prejudice the outcome of the Commission's pending rulemaking. In addition, the condition is applicable to any agreement under which Bell Atlantic or GTE has failed to make payments for Internet-bound traffic, so that all CLECs that have carried such traffic will benefit. Consequently, Cox believes that inclusion of this condition in any order granting the transfer applications would fully address Bell Atlantic's and GTE's failure to make payments due under their interconnection agreements without making any policy judgments regarding future compensation arrangements for Internet-bound traffic.

Please inform me if you have any questions concerning this letter or Cox's proposed condition.

Sincerely,



J.G. Harrington
Counsel for Cox Communications, Inc.

JGH/vll

Attachment

¹ For your convenience, a copy of an earlier written *ex parte* filing regarding this issue, which describes Cox's efforts to enforce its agreement with GTE, is attached to this letter.